

REMARKS

This amendment is responsive to the Office Action dated January 24, 2002 pursuant to which the drawing has been accepted; claim 1 is objected to; claims 15-17 stand rejected under 35 USC 112, second paragraph; claim 1 stands rejected under 35 USC 102(b); claims 9, 10 and 14 stand rejected under 35 USC 103(a); claims 2-8 and 11-13 are objected to as depending from a rejected base claim; and, claims 15-17 are indicated as being allowable if rewritten to overcome the rejection thereto and include the limitations of the base claim from which they depend and any intervening claim.

Per this amendment, claim 1 has been rewritten to remove capitalized letters. Following the helpful suggestions of the Examiner, the courtesies of which are gratefully acknowledged, the dependency of claims 15-17 has been corrected.

Accordingly, it is respectfully submitted that the objection to claim 1 and rejection of claims 15-17 should be withdrawn.

US Patent 5,662,239 has been cited in support of the 35 USC 103(a) rejections of claims 9 and 14. It should be noted that the patentee of this patent is G. M. Heuerman, not C. L. Burkett, and is entitled "Medicinal Container With Complete Instructions", a completely different field of art. Therefor, the ensuing discussion of these USC 103(a) rejections does not include any remarks directed to this patent. Further, clarification is respectfully requested.

Two separate rejections of claim 1 under 35 USC 102(b) have been applied. In support of one of these rejections, US Patent 5,669,239 to Tobita has been relied upon and in support of the other of these rejections, US Patent 4,630,453 to Burkett has been relied upon.

Each of these rejections is respectfully traversed and their reconsideration is respectfully solicited.

The patent to Tobita discloses a pierced earring having a cylindrical pin member that is provided with an engaging groove; a cylindrical fastener body or nut that is provided with a longitudinal split groove or slit; and, an engaging ridge (Col. 2, l. 61-Col. 3, l. 9). The engaging ridge intimately contacts the engaging groove while the fastener body is caused to expand outwardly by pressure exerted on the split groove thereby enabling the fastener body to resume its former, at rest state after the ridge has been seated in the groove (Col. 4, ll. 36-63). A circular flange is also provided and is equipped with finger rests to facilitate handling of the nut (Col. 4, ll. 44-49).

It is submitted to be patently clear that the patent to Tobita does not suggest, much less disclose, applicant's claimed outwardly extending spring fingers nor applicant's claimed outwardly extending user gripping tabs. It is further respectfully submitted that the longitudinal split groove or slit provided in the fastener body or nut is not the mechanical equivalent of nor does it perform the same function as either applicant's spring fingers and/or user gripping tabs.

The patent to Burkett discloses post type earring fasteners having a conventional clutch with a finger operated clutch-catch (Col. 2, ll. 31-33). The clutch mechanism consists of two curls that circle upward, inward, downward and then outward to almost touch each other over a hole formed in the base of the fastener (Col. 2, l. 67-Col. 3, l. 3). The clutch-catch mechanism consists of two wings that extend upward and inward from the base positioned over the clutch mechanism until they touch one another. The edges of both wings are sharpened and have a semi-circular indentation offset from one another. The wings are also provided with finger tabs near their sharpened edges that form a space between the inside of the finger tab and the outer sharpened corner of the edge of an opposite wing (Col. 3, ll. 4-13).

To secure an earring post, the post is inserted through the hole in the base plate forcing the clutch curls apart which, in turn, grip and guide the post to the area of the semi-circles on the wings forcing them apart and enabling the post to be extended beyond their sharpened edges whereupon the sharpened edges come together to grip and secure the post. During insertion and securing of the post, the finger tabs or wings can be squeezed to assist the alignment of the semi-circular indentations and facilitate the passing of the post therethrough (Col. 3, ll. 18-30).

As with the patent to Tobita, it is respectfully submitted that the patent to Burkett does not suggest, much less disclose applicant's claimed outwardly extending spring fingers and/or applicant's claimed outwardly extending user gripping tabs, which are provided to facilitate removal of a jewelry post, not guide its insertion. It is further respectfully submitted that the Burkett patent does not disclose any elements that are the mechanical equivalent of applicant's spring fingers and/or user gripping tabs.

It is further respectfully submitted that the Burkett disclosure does not cure any of the deficiencies noted above in the Tobita patent nor does the Tobita disclosure cure any of the deficiencies note above with respect to the Burkett patent.

The patent to Tobita, *supra*, has been combined with US Patent 1,201,549 to Brumbach to support the 35 USC 103(a) rejection of claim 9.

This rejection is respectfully traversed and its reconsideration is respectfully solicited.

The patent to Brumbach is directed to and discloses a hat pin protector having a head, a shank, and an elongated casing which is provided with a finger piece to assist in affixing and removing the hat pin. Also included is a cone shaped cap that receives the pointed end of the hat pin and opposed jaws that grip the shank of the hat pin and hold it in place.

It is respectfully submitted that the hat pin protector disclosed in the Brumbach patent does not include any elements recited in applicant's claims.

It should be noted that while this patent to Brumbach is cited in support of the 35 USC 103(a) rejection of claim 9, there is no statement in the Office Action that indicates why this reference was cited and relied upon.

The patents to Tobita and Burkett (453), *supra*, have been combined with US Patent 5,906,114 to Rissin to support the 35 USC 103(a) rejection of claim 10.

This rejection is also respectfully traversed and its reconsideration is respectfully solicited.

The Rissin patent discloses an earring stabilizer that extends upwardly from a clip hinge and is disposed parallel to a common earring to engage the *emurentia conchae* of the ear (Fig. 6; Col. 3, ll. 7-22).

Applicant's claim 10 recites that the earring stabilizer extends *radially* outward from the base plate recited in claim 1, the claim from which it depends. It is submitted, therefore, that the Rissin disclosure does not render applicant's claimed *radially* disposed stabilizer obvious whether considered singly or in combination with the Tobita and/or the Burkett (453) disclosures. Further, claim 10 recites a further embodiment of the earring recited in claim 1 and, with a finding of allowability of claim 1, it is submitted that claim 10 should also be found allowable.

The patents, *supra*, to Tobita, Brumbach and Rissin have been combined to support the 35 USC 103(a) rejection of claim 14.

This rejection is respectfully traversed and its reconsideration is respectfully solicited.

Claim 14 is similar to rejected claim 10 discussed above as it also recites that the earring of claim 9, from which it depends, includes a *radially* extending stabilizer. As with claim 10, it is respectfully submitted that the references relied upon to support the rejection of claim 14 do not render the embodiment of this claim obvious whether these references are considered singly or in combination.

Therefore, with a finding of allowability of claim 9, it is submitted that claim 14 should also be found to be allowable.

In view of the present amendment and in light of the foregoing remarks, it is respectfully submitted that applicant's claimed invention has been clearly distinguished from the references of record, whether considered singly or in combination, and that applicant's claims define patentable invention. Favorable reconsideration of this case and passing the claims herein to an early issue are, therefore, respectfully solicited. Applicant requests a three (3) month extension of time. A check for \$460.00 is enclosed.

Please charge any additional fees to Deposit Account No. 06-0515

Respectfully submitted,

By 

Stephen E. Feldman
Attorney for Applicant(s)
Reg. No. 22,473

12 East 41st Street
New York, NY 10017

212-532-8585

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner Patents and Trademarks, Washington, DC 20231 on 8/21/02



Version of Claim 1 With Markings to Show Changes Made

1. A jewelry clasp for gripping the post of a piece of jewelry, said jewelry clasp comprising:

[A] a base plate having a first surface for facing toward said piece of jewelry and a second surface for facing away from said piece of jewelry, an opening in said base plate for passing a jewelry post therethrough;

[At] at least one spring finger extending outwardly from said second surface to a position where a portion of the spring finger can frictionally engage a side surface of a jewelry post when said post is passed through said opening; and

[At] at least one user gripping tab extending outwardly from said base plate second surface to a position where said tab can be gripped by a user for removal of said jewelry clasp from said post.